



David B. Cohen  
Mayor

## CITY OF NEWTON, MASSACHUSETTS

### Department of Planning and Development

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Public Hearing Date:	February 23, 2004
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90-Day Expiration Date:	May 23, 2004

TO: Mayor David B. Cohen  
Board of Aldermen  
Planning and Development Board

FROM: Michael Kruse, Director of Planning and Development  
Juris Alksnitis, Chief Zoning Code Official

SUBJECT: Petition # 355-03 of ALD. LINSKY & JOHNSON proposing that footnote 7(4) of Table 1 contained in **Sec. 30-15** be amended by deleting the word "second".

***RECOMMENDATION: Approve with modifications***

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The purpose of this memorandum is to provide the Mayor, Board of Aldermen, Planning and Development Board, and the public with technical information and planning analysis which may be useful in the decision making process of the Boards. The Planning Department's intention is to provide a balanced view of the issues with the information it has at the time of the public hearing. There may be other information presented at or after the public hearing that the Zoning and Planning Committee of the Board of Aldermen will consider its discussion at a subsequent Working Session.

#### I. BACKGROUND

Floor area ratio (FAR) regulations were first incorporated into the Zoning Ordinance in 1997 with the adoption of Ordinance V-112, April 23, 1997 (Board Order 457-96(2)). A key purpose of FAR is to help regulate the density of development and building mass on a lot by setting limits on gross floor area, which may be built.

Section 30-15, Table 1- Density & Dimensional Controls in Residence Districts and for Residential Uses (Table 1) establishes the respective FAR requirements by zone. These are further detailed and amplified in footnotes 5, 6, and 7. In turn, Footnote 7 has four

parts, including part 4, which is the subject of this petition. While subsequent Ordinance V-122 further refined certain definitions and FAR limits, Footnote 7 was not modified. Aldermen Linsky and Johnson propose to eliminate the word “second” thereby broadening the effect of Footnote 7(4). For residential buildings FAR is expressed as a ratio of gross floor area of a building divided by total lot area. Section 30-1 sets out detailed definitions of FAR and gross floor area, and are also provided in Attachment A.

## II. EXISTING ORDINANCE AND PROPOSED AMENDMENT

The proposed change under this petition affects Section 30-15, Table 1, Footnote 7(4)

### CURRENT TEXT, FOOTNOTE 7(4):

*“FAR requirements shall apply only to...and (4) in a multi-residence zoning district, construction of a second residential dwelling unit which lies in whole or in part outside the walls, i.e. the existing footprint, of any existing residential dwelling unit.”*

The petitioners propose to delete the word “second” from the above text.

## III. ANALYSIS

Committee reports of Board of Aldermen deliberations leading up to the adoption of the FAR regulations in 1997 as a mechanism to regulate “as of right” development indicate concern regarding construction of very large homes (“monster homes”) and regarding conversion of a single family dwelling to a two-family dwelling with a large addition outside the footprint of the original dwelling. However, the Board also sought to avoid impacting existing structures, and in general applied FAR primarily to new construction or where an existing structure was demolished 50% or more as part of a reconstruction project. The following table summarizes the application of FAR to residential structures.

Zone	FAR O/L & N/L	Footn. 7(1) FAR applies <u>only to:</u> All above grade new construction	Footn. 7(2) FAR applies <u>only to:</u> Total demo of SF home & repl. by 2F	Footn. 7(3) FAR applies <u>only if:</u> more than 50% of exist. structure is demolished	Footn. 7(4) FAR applies <u>only if:</u> 2 <sup>nd</sup> unit is built outside existing footprint.
SR1	.2	Yes	No	Yes	No
SR2	.3	Yes	No	Yes	No
SR3	.35	Yes	No	Yes	No
MR1	.4	Yes	Yes	Yes	Yes
MR2	.4	Yes	Yes	Yes	Yes
MR3	.4	Yes	Yes	Yes	Yes

In addition, the following apply in all residential zones:

Footnote 5 – Allows an increased FAR by special permit if the proposed structure is consistent with and not in derogation of the size, scale, and design of other structures in the neighborhood.

Footnote 6 – Provides a FAR bonus of 0.05 for construction on pre-1953 lots when post-1953 lot setback and coverage requirements are met.

The above table indicates that the Zoning Ordinance makes available various FAR exclusions for existing structures. In effect, one can significantly alter an existing structure (1F or 2F) and increase its FAR - without any limit - so long as less than 50% of the structure is demolished. As a result, in a situation where a structure contains two units, each of the units can be expanded without FAR limits so long as less than 50% of the structure is demolished, and so long as all other applicable dimensional controls including lot coverage and minimum open space are observed. However, when FAR is triggered, the calculation applies to the total building – i.e. existing old portions and new construction. It is also noted that while the special study committee (the 30-15 Task Force) established by the Zoning and Planning Committee (ZAP) of the Board of Aldermen to evaluate and recommend improvements to Section 30-15 has from time to time discussed whether to consider elimination of the 50% exclusion and to apply FAR across the board to all situations has not yet developed a recommendation on this matter.

Following the adoption of FAR requirements in 1997 FAR applies fully to all new construction, which has occurred since that time. For example, if built after 1997, a structure is deemed “new construction” subject to Footnote 7(1), including subsequent additions.

Also, as indicated in the above table, the construction of a second unit is possible only in Multi Residence zones. While more than two units (attached dwelling units, multi-family dwellings, garden apartments) are also allowed in MR2-MR3 zones, these are allowed only subject to special permit and in such case FAR is not specified in Table 1. Accessory apartments (third dwelling unit) are allowed in MR1 and MR2 zones upon grant of a special permit. As a result, development involving more than two units in MR zones is largely controlled through the special permit process

However, a case has arisen with development of a very large addition as second unit in an MR1 zone, which has avoided the FAR requirement. At 15 Washington Park, Newtonville, an existing two-family home was converted to a single unit and another very large dwelling unit was simultaneously added to the rear as the second unit. Although the second unit was built outside the existing footprint, a condition which would normally trigger FAR per footnote 7(4), because the existing structure already had a “second unit” within the original building envelope, an interpretation was adopted which exempted the new addition (“new second unit”) from FAR. As a result, an estimated original FAR of .16 (based on old floor area of 2,356 sq. ft. per Assessors database information) grew to approximately .53 (calculated using lot coverage of 3,856

sq. ft. x 2 floors = 7,712 sq. ft. as proxy number; FAR was not calculated for this project). Maximum FAR is .4 in the MR-1 zone and would otherwise allow a significant structure with 5,776 sq. ft. based on the lot size of 14,439 sq. ft.

The proposed elimination of the word “second” is intended to address the above situation and to ensure that FAR is applied. Deletion of the limiting adjective “second” would result in a more general and broad application of the FAR requirement, including the 15 Washington Pk. scenario. Since FAR is defined as applicable to “a building” and building is defined in Section 30-1 as “A structure, including alterations, enlargements, and extensions thereto..” it is also possible to pursue a line of interpretation which applies FAR per footnote 7(4) wherever a “second” unit is constructed outside the existing footprint, regardless of whether the original structure contained two units or not. Nevertheless, the current petition provides an opportunity to clarify footnote 7(4) and facilitate consistent interpretation of this requirement.

#### IV. RECOMMENDATION

The Planning Department believes that it makes sense to continue to apply the FAR requirement to “as of right” construction involving development of new units where this occurs outside the existing building envelope on lots zoned Multi Residence. The proposed deletion of the word “second” will serve to clarify this provision and make it more broadly applicable than previously interpreted. In addition, the Board may wish to consider further clarification by inserting “any” in place of “a”. As accessory apartments in MR1 and MR2 zones are subject to special permit, the subject amendment would not apply to such units, although they may in part lie outside the existing footprint.

The Planning Department supports petition #355-03, and suggests the additional word “any” be inserted in place of “a”. With the suggested change, Footnote 7(4) would read as follows:

*“(4) in a multi-residence zoning district, construction of **any** residential dwelling unit which lies in whole or in part outside the walls, i.e., the existing footprint, of any existing residential dwelling unit.”*

To clarify the final number of units involved, further language might be added at the end of the sentence as follows (in bold):

*“(4) in a multi-residence zoning district, construction of **any** residential dwelling unit which lies in whole or in part outside the walls, i.e., the existing footprint, of any existing residential dwelling unit, **regardless of whether such construction does or does not increase the number of dwelling units on the lot.**”*

Attachments*Attachment A: Selected Definitions per Section 30-1***Attachment A – Selected Definitions per Section 30-1**

Attic: The space between the ceiling joists of the top full story and the roof rafters.

Basement: Any story in a building in which two-thirds (2/3rds) or more of the distance between the floor and the ceiling next above it is below the average grade plane adjacent to the building. However, in the case of one- and two-family residential uses, any story in a building in which one half (1/2) or more of the distance between the floor and the ceiling next above it is below the average grade plane adjacent to the building.

Building: A structure, including alterations, enlargements, and extensions thereto, built, erected, or framed of any combination of materials having a roof, whether portable or fixed, designed or intended for the shelter of persons, animals, or the storage of property.

Floor area ratio (residential): (a) For residential structures in residential districts, gross floor area of a building on the lot divided by total lot area.

Floor area, gross (residential): (a) For residential structures in residential districts, the sum of the floor area within the perimeter of the outside walls of the building without deduction for garage space, hallways, stairs, closets, thickness of walls, columns, atria, open wells and other vertical open spaces, or other features exclusive of any portion of a basement as defined in this section. For atria, open wells and other vertical open spaces, floor area shall be calculated by multiplying the floor level area of such space by a factor equal to the average height in feet divided by ten (10). Excluded from the calculation are bays or bay windows which are cantilevered and do not have foundations and which occupy no more than ten (10) per cent of the wall area on which they are mounted and any space in an attic or half story as defined in this ordinance.